

## 37 Am. Jur. 2d Fraud and Deceit § 38

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### Fraud and Deceit

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### II. Elements and Requisites

#### B. Particular Elements or Considerations

##### 2. Relationship of Parties

## § 38. Manner of entrusting confidence; need for acceptance by party entrusted

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Fraud](#)  1 to 7, 26

A confidential or fiduciary relationship may arise when the parties have dealt with each other in such a manner for a long period of time that one party is justified in expecting the other to act in its best interest.<sup>1</sup> The origin of the confidence is immaterial,<sup>2</sup> and the trust reposed may be continuous or temporary.<sup>3</sup>

Confidence alone is not enough to establish a fiduciary relationship;<sup>4</sup> rather, the fact that a plaintiff reposed confidence in the defendant does not cast any duty on him or her unless the defendant voluntarily assumes a relation of personal confidence with the plaintiff.<sup>5</sup> Before a person can be charged with a fiduciary obligation, he or she must either knowingly undertake to act on behalf and for the benefit of another or must enter into a relationship which imposes that undertaking as a matter of law.<sup>6</sup> A confidential relationship is created, for the purposes of determining whether a fiduciary duty was undertaken by agreement, when a confidence is reposed by one person in the integrity of another, and the party in whom the confidence is reposed voluntarily accepts or assumes to accept the confidence.<sup>7</sup> The fact that one party places trust or confidence in the other does not create a confidential relationship in the absence of some recognition, acceptance, or undertaking of fiduciary duties on the part of the other party.<sup>8</sup>

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### Footnotes

<sup>1</sup> In re Estate of Abernethy, 2012 WL 1943760 (Tex. App. El Paso 2012).

<sup>2</sup> Brannon v. Boatmen's Nat. Bank of Oklahoma, 1999 OK CIV APP 17, 976 P.2d 1077 (Div. 4 1998); Sabhari v. Sapari, 1998 SD 35, 576 N.W.2d 886 (S.D. 1998).

<sup>3</sup> Knapp v. American General Finance Inc., 111 F. Supp. 2d 758 (S.D. W. Va. 2000) (applying West Virginia law).

- <sup>4</sup> Knapp v. American General Finance Inc., 111 F. Supp. 2d 758 (S.D. W. Va. 2000) (applying West Virginia law).
- <sup>5</sup> BancOklahoma Mortg. Corp. v. Capital Title Co., Inc., 194 F.3d 1089 (10th Cir. 1999) (applying Missouri law); Steinert v. Winn Group, Inc., 83 F. Supp. 2d 1234 (D. Kan. 2000) (applying Kansas law); Williams-Garrett v. Murphy, 106 F. Supp. 2d 834 (D.S.C. 2000) (applying South Carolina law); Knapp v. American General Finance Inc., 111 F. Supp. 2d 758 (S.D. W. Va. 2000) (applying West Virginia law); Brannon v. Boatmen's Nat. Bank of Oklahoma, 1999 OK CIV APP 17, 976 P.2d 1077 (Div. 4 1998).
- <sup>6</sup> City of Hope Nat. Medical Center v. Genentech, Inc., 43 Cal. 4th 375, 75 Cal. Rptr. 3d 333, 181 P.3d 142 (2008).
- <sup>7</sup> Das v. Bank of America, N.A., 186 Cal. App. 4th 727, 112 Cal. Rptr. 3d 439 (2d Dist. 2010), review denied, (Oct. 13, 2010).
- <sup>8</sup> American Honda Motor Co., Inc. v. Motorcycle Information Network, Inc., 390 F. Supp. 2d 1170 (M.D. Fla. 2005) (applying Florida law).

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